Canada Border Services Agency | Agence des services frontaliers du Canada

ISSN 2369-2391

Memorandum D11-4-20

Ottawa, August 7, 2018

Procedures for Verifications of Origin Under a Free Trade Agreement

In Brief

The revision of this memorandum is part of an overall revision of the D Memoranda series to reflect the implementation of the Canada-Panama Free Trade Agreement (CPAFTA). Changes have been made to the "Guidelines and General Information" to provide legislative, policy and procedural information related to the administration of this free trade agreement.

This memorandum outlines and explains the verification procedures pursuant to sections 42 and 97.201 of the *Customs Act*, Article 506 of the North American Free Trade Agreement (NAFTA), Article E-06 of the Canada-Chile Free Trade Agreement (CCFTA), Article 5.6 and Annex 5.6.2 of the Canada-Israel Free Trade Agreement (CIFTA), Article V.6 of the Canada-Costa Rica Free Trade Agreement (CCRFTA) and the Regulations of the NAFTA, CCFTA, CIFTA and CCRFTA, Article 406 of the Canada-Peru Free Trade Agreement (CPFTA), Article 406 of the Canada-Colombia Free Trade Agreement (CCOFTA), Article 24 of Annex C of the Canada-European Free Trade Association Free Trade Agreement (CEFTA), Article 5-6 of the Canada-Jordan Free Trade Agreement (CJFTA) and Article 4.07 of the Canada-Panama Free Trade Agreement (CPAFTA).

Legislation

Sections 42.1 and 97.201 of the *Customs Act*

NAFTA and CCFTA Verification of Origin Regulations

CIFTA Verification of Origin Regulations

CCRFTA Verification of Origin Regulations

CPFTA Verification of Origin Regulations

CCOFTA Verification of Origin Regulations

CEFTA Verification of Origin of Imported Goods Regulations

CEFTA Verification of Origin of Exported Goods Regulations

CJFTA Verification of Origin Regulations

CPAFTA Verification of Origin Regulations

Guidelines and General Information

1. Verifications of origin determine whether goods claimed as originating under a free trade agreement satisfy the rules of origin and are entitled to a preferential tariff treatment accorded under that free trade agreement.

2. Verification procedures have been developed for each of the free trade agreements. The guidelines set out in the appendices outline and explain the procedures that customs administrations must follow when conducting a verification of origin. Appendix A outlines the procedures to be used for NAFTA and CCFTA verifications, Appendix B outlines the procedures for CIFTA verifications, Appendix C outlines the procedures for CCRFTA

verifications, Appendix D outlines the procedures for CPFTA, CCOFTA, CJFTA, and CPAFTA verifications and Appendix E outlines the procedures for CEFTA verifications.

3. These guidelines also provide exporters, producers and suppliers in Canada with an overview of the procedures that will take place should they be subject to verification by the customs administrations of the United States, Mexico, Chile, Israel, Costa Rica, Peru, Colombia, Jordan or Panama. In the case of CEFTA, the Canada Border Services Agency (CBSA) will conduct the verification of origin on behalf of the customs administration of the European Free Trade Association (EFTA) country of import (Iceland, Norway, Switzerland or Liechtenstein). Should exporters, producers or suppliers in Canada require confirmation of procedures during verification, they are advised to contact the customs administration proposing to conduct the verification.

4. For purposes of the Appendices, "customs administration" means, for Canada, the CBSA.

5. Where goods have been accounted for and a preferential rate of duty has been claimed under a free trade agreement, import accounting documents and exporter or producer records are reviewed during a verification to ensure that the goods do in fact qualify as originating in the corresponding territory.

6. This process requires that importers be in possession of a valid exporter's Certificate of Origin. Information concerning the proof of origin requirements for commercial importations for which a preferential tariff treatment is claimed is contained in Memorandum D11-4-2, *Proof of Origin of Imported Goods*.

7. Prior to initiating a verification, where a Certificate of Origin is not properly completed or additional details are needed, information may be requested from the importer, exporter, or producer to determine if the Certificate of Origin is valid. Refer to Memorandum D11-4-14, *Certification of Origin Under Free Trade Agreements*, for instructions on the completion of the Certificate of Origin.

8. Record-keeping requirements for importers and exporters in:

(a) Canada, are for a period of not less than six years;

(b) the United States, are for a period of not less than five years;

(c) Mexico, are for a period of not less than five years;

(d) Chile, are for a period of not less than five years;

(e) Israel, are for a period of not less than five years;

(f) Costa Rica, are for a period of not less than five years;

(g) Peru, are for a period of not less than five years;

(h) Colombia, are for a period of not less than five years;

(i) an EFTA country (Iceland, Norway, Switzerland and Liechtenstein), are for a period of not less than three years;

(j) Jordan, are for a period of not less than five years; and

(k) Panama, are for a period of not less than five years.

9. Information concerning the maintenance of records and books for importers and exporters in Canada is contained in Memorandum D17-1-21, *Maintenance of Records in Canada by Importers*, and Memorandum D20-1-5, *Maintenance of Records and Books in Canada by Exporters and Producers*.

Additional Information

10. For further information concerning the verification of origin procedures under a free trade agreement, contact:

Trade Compliance Division, Programs Branch
Canada Border Services Agency
Ottawa ON K1A 0L8
Facsimile: 613-954-5500

11. For more information, within Canada call the Border Information Service at **1-800-461-9999**. From outside Canada call 204-983-3500 or 506-636-5064. Long distance charges will apply. Agents are available Monday to Friday (08:00 – 16:00 local time / except holidays). TTY is also available within Canada: **1-866-335-3237**.

Appendix A

Guidelines for NAFTA and CCFTA Verifications

Scope of a Verification

1. The purpose of a verification is to determine:

(a) whether goods imported into a free trade country are entitled to a preferential rate of duty accorded under that free trade agreement;

(b) whether the NAFTA preferential tariff treatment applied to originating goods complies with the regulations found in Memorandum D11-4-19, *The Determination of When Goods are Entitled to the Benefit of the United States Tariff, Mexico Tariff or Mexico-United States Tariff*; and

(c) whether agricultural goods are qualifying goods for the purposes of Annex 703.2 of the NAFTA.

Manner of Conducting a Verification of Origin

2. A verification may be conducted by way of:

(a) verification questionnaires;

(b) verification letters;

(c) visits to the premises; or

(d) any other method of communication, as the Parties may agree.

Verification Letters and Questionnaires

3. As part of the verification process, the customs administration may send, by regular mail or certified mail, to the exporter or producer of the goods or a producer or supplier of a material a verification questionnaire or letter identifying:

(a) the customs administration requesting information;

(b) the goods or materials that are subject to the verification; and

(c) the period within which the verification letter must be answered or the verification questionnaire must be completed and returned.

The information requested in the verification questionnaire or letter is a consolidation of information that the exporter, producer or supplier would have on hand and use to determine whether the goods qualify for preferential tariff treatment under the NAFTA or the CCFTA.

4. The period mentioned in paragraph 3*(c)* shall not be less than 30 days after the date on which the verification letter or questionnaire was sent.

5. Where a response to an initial verification questionnaire or letter has not been received, within the specified time, from the exporter or producer in:

(a) Mexico or Chile, the verification questionnaire or letter must be sent again by a method which produces confirmation of receipt, and may be accompanied with a written statement and the notice of intent to deny, described in paragraphs 23 to 28;

(b) the United States or Canada, the verification questionnaire or letter must be sent again and may be accompanied with a written statement and the notice of intent to deny, described in paragraphs 23 to 28.

6. Where the exporter or producer fails to respond to a subsequent verification questionnaire or letter referred to in paragraph 7, and where the customs administration conducting the verification does not include the notice of intent to deny and the written statement, instructions provided under paragraphs 23 to 27 must be followed.

7. Where the producer or supplier of a material fails to respond to a subsequent verification questionnaire or letter, the origin of the material shall be considered unknown and therefore non-originating.

8. If it is found that the information provided in the verification questionnaire or letter is insufficient to support the exporter's Certificate of Origin, the customs administration can request additional information, by corresponding with the exporter or producer of a good or the producer or supplier of a material, or undertake a verification visit.

9. Where the customs administration is able to determine whether the goods qualify for preferential tariff treatment from the information provided, instructions provided under paragraphs 23 to 28 must be followed.

Other Methods of Communication

10. The customs administration may obtain information regarding the origin of the goods by any other method of communication (e.g., telephone) from the exporter or producer of a good or a producer or supplier of a material. Should any information obtained result in denial of preferential tariff treatment, that information must be confirmed in writing.

Verification Visits

11. Verification visits are performed at the premises of the exporter or producer of a good or the premises of a producer or supplier of a material to verify that the goods meet the rules of origin in accordance with the NAFTA or CCFTA.

Conditions for Conducting a Verification Visit

12. Prior to a visit from a customs administration at the premises of an exporter or producer of a good or of a producer or supplier of a material, the customs administration must send a written notification of the intent to conduct a verification visit by any method that produces a receipt to:

(a) the customs administration of the country where the verification visit will take place (this notification function is controlled by the Trade Compliance Division);

(b) the person whose premises are the subject of the verification visit; and

(c) where requested by the customs administration of the exporting party, that party's embassy located in Canada.

13. The notification referred to in paragraph 12 shall specify:

(a) the customs administration issuing the notification;

(b) the name of the person whose premises are to be visited;

(c) the date and place of the proposed verification visit;

(d) the object and scope of the verification visit, including a description of the goods and/or materials that are subject to the verification;

(e) the names and titles of the officers conducting the verification visit; and

(f) the legal authority for the verification visit.

14. The person whose premises are subject to the verification must give written consent for the customs administration to conduct the verification visit, within 30 days of receiving the notice.

15. Where the producer or supplier of a material does not consent to a verification visit or denies access to the books and records, the origin of the material shall be considered unknown and therefore non-originating.

Postponement of a Verification Visit

16. The customs administration of the country being visited may postpone the verification visit, by sending a written request to the officer who sent the notice. This request must be sent within 15 days of receipt of the notice. The postponement must not exceed 60 days from the date of receipt, unless a longer period is agreed to by the customs administrations of the importing and exporting countries. The goods will not be denied preferential tariff treatment on the basis that the verification visit has been postponed.

Observers

17. An exporter, producer or supplier subject to a verification visit is permitted to have two observers present during the verification visit. Each person designated as an observer must be identified to the customs official conducting the verification visit at any time prior to or at the commencement of their role as an observer. The observers are not to participate, only to observe. This provision does not preclude the exporter, producer or supplier from having persons available to participate during verification.

Regional Value Content

18. Where a producer elects to average the regional value content of those goods over a time period, the customs administration conducting the verification will not verify the regional value content of those goods, until that time period has elapsed.

19. Should a producer of a motor vehicle elect to average its regional value content calculation over its fiscal year in accordance with paragraph 3 of Article 403 of the NAFTA or paragraph 2 of Article D-03 of the CCFTA, the customs administration conducting the verification may request in writing that a cost submission reflecting the actual costs, incurred in the production of the category of motor vehicles elected, be submitted no later than:

(a) 180 days after the close of the producer's fiscal year; or

(b) 60 days from the date on which the request was made.

20. Where the customs administration sends a written request for a cost submission to the producer of a motor vehicle, this written request will be considered to be a verification letter.

Generally Accepted Accounting Principles

21. Where the customs administration finds during a verification that a producer has failed to maintain books and records in accordance with the Generally Accepted Accounting Principles (GAAP) applicable in that country, the officer shall provide written notice to that producer stating that they have 60 days from receipt of the written notice to record those costs in accordance with the GAAP.

Denial or Withdrawal of Preferential Tariff Treatment

22. The customs administration may deny or withdraw the preferential tariff treatment from the goods that are subject to a verification, where:

(a) the exporter or producer fails to consent to a verification visit within 30 days of confirmed receipt of the notification of the verification visit;

(b) subject to paragraph 21, the exporter or producer fails to maintain books and records or provide sufficiently detailed information;

(c) the exporter or producer denies access to books and records;

(d) the exporter or producer fails to answer the subsequent verification letter or questionnaire within the specified time; or

(e) the origin of the good is changed because a material used in the production of the good is determined to be non-originating as set out in paragraphs 7 and 15.

In such cases, the customs administration will send a written statement (as outlined below) with a notice of intent to deny to the person who signed the Certificate of Origin.

Written Statement

23. The customs administration conducting the verification will provide the exporter or producer with a written statement on whether the goods qualify for preferential tariff treatment, detailing the findings and legal basis on which the determination was made.

24. Should the goods qualify for preferential tariff treatment, the written statement may be sent by regular mail.

25. Where the written statement includes a determination that the goods are non-originating, a notice of intent to deny preferential tariff treatment must also be included. It will identify a time period in which further information can be provided and will include the date after which preferential tariff treatment will be withdrawn for the goods verified.

26. Where the written statement with the notice of intent to deny is being sent to an exporter or producer in:

(a) Mexico or Chile, the method of sending must provide confirmation of receipt and the notice period given must be at least 30 days from the date of confirmed receipt; or

(b) the United States or Canada, the notice period given must be at least 30 days from the date sent.

27. If information is brought forward within 30 days of the date of receipt of the notice, the information will be reviewed to determine if the goods qualify for preferential tariff treatment.

28. Where a verification of a producer or supplier of a material has been conducted, the customs administration conducting the verification will inform the producer or supplier by letter whether or not the specific material under review is an originating material. This letter is sent as an informal courtesy and not as a result of obligations under any legislation or regulation.

Pattern of Conduct by an Exporter or Producer Regarding False or Unsupported Origin Certification

29. Pattern of conduct is established where it has been determined that the exporter or producer has made false or unsupported representations that goods imported in a free trade country qualify for preferential tariff treatment and has resulted in not less than two negative written statements with respect to identical goods, as a result of not less than two verifications of not less than two importations. Article 514 of NAFTA and Article E-14 of CCFTA define "identical goods" as:

> … goods that are the same in all respects, including physical characteristics, quality, and reputation, irrespective of minor differences in appearance that are not relevant to a determination of origin of those goods.

30. Once a pattern of conduct is established, the customs administration may withhold preferential tariff treatment on identical goods until the exporter or producer establishes compliance.

31. If a pattern of conduct is established, the verification process does not need to be conducted on future imports of identical goods. However, the importer must be notified each time the goods are denied preferential tariff treatment. The exporter and/or producer must be notified that the goods have been denied preferential tariff treatment if they have provided the importer with a Certificate of Origin after a pattern of conduct has been established.

Interpretation of Tariff Classification and Valuation of Materials

32. This refers to materials used in the production of goods where the exporter or the importer has relied on a tariff classification or value applied to those materials by the customs administration of the country from which the goods were exported.

33. Where the customs administration of the country in which the goods were imported determines that goods do not qualify as originating goods based on a tariff classification or a value applied to one or more of the materials used in the production of those goods, which differs from that of the customs administration of the exporting country, the determination will not become effective until the importer and the person who signed the Certificate of Origin have been notified in writing of the determination by the customs administration of the country in which the goods were imported. This would apply where the exporter has:

> *(a)* been issued an advance ruling or ruling on the tariff classification or value of the materials, or given consistent treatment to the entry of the materials under the tariff classification or value at issue by the customs administration; and
>
> *(b)* the advance ruling or ruling or consistent treatment, as defined in the Uniform regulations of the free trade agreement, was given prior to notification of the determination.

Note: This applies to a material that is used in the production of goods, or that is used in the production of a material that is used in the production of goods.

34. Where a customs administration denies preferential tariff treatment to goods, and the conditions described in paragraphs 35*(a)* and *(b)* exist, the effective date of the denial shall be postponed for a period not exceeding 90 calendar days, with the provision that the importer of those goods or the person who completed and signed the Certificate of Origin demonstrate that they relied in good faith to their detriment on the tariff classification or value applied to such materials by the customs administration.

35. Consistent treatment means the established application by the customs administration of a party that can be substantiated by the continued acceptance by that customs administration of the tariff classification or value of

identical materials on importations of the materials into its territory by the same importer, over a period of not less than two years immediately prior to the date when the Certificate of Origin for the good which is the subject of the determination under paragraph 11 of Article 506 of NAFTA or paragraph 11 of Article E-06 of CCFTA, was completed, provided that with respect to those importations:

(a) the materials had not been accorded a different tariff classification or value by one or more district, regional, or local offices of that customs administration on the date of the determination; and

(b) the tariff classification or value of such materials is not the subject of a verification, review, or appeal by that customs administration on the date of the determination.

Modification or Revocation of a Ruling

36. Where the customs administration modifies or revokes a ruling other than an advance ruling, the modification shall not apply to goods, which are the subject of the ruling, that have been imported by the person who was given the ruling prior to the date of modification or revocation, if:

(a) all the terms and conditions specified in the ruling have been complied with; and

(b) there has been no change in the material facts or circumstances on which the ruling was based.

Review and Appeal

37. Where the origin of the goods has been re-determined and preferential tariff treatment has been denied or withdrawn, the CBSA shall notify the exporter or producer. A decision to deny preferential tariff treatment is appealable by the importer, and the exporter or producer who signed the Certificate of Origin.

38. Where a producer who is not the exporter signs a Certificate of Origin voluntarily for the exporter, the producer will also have the right to appeal the re-determination of origin.

39. Information concerning importer appeals is contained in Memorandum D11-6-7, *Importers' Dispute Resolution Process for Origin, Tariff Classification, and Value for Duty of Imported Goods*.

Evidence of Fraud

40. Should evidence of fraud or misrepresentation be uncovered regarding an exporter or producer, the customs administration will turn such evidence over to the customs administration of the exporting country and ask them to continue the investigation and, if warranted, undertake appropriate prosecution under the laws of the exporter's country.

41. Similarly, fraudulent certification by a Canadian exporter or producer is an offence in Canada, subject to prosecution under the laws of Canada.

Appendix B

Guidelines for CIFTA Verifications

1. CIFTA provides the customs administration of the exporting country the right to decide to collect the verification information themselves and to provide it to the customs administration of the importing country, which will then make the determination.

2. Israel has chosen to collect the information on behalf of Canada, while Canada has elected not to exercise its right to collect the information on behalf of the other Party.

Scope of a Verification

3. The purpose of verification is to determine whether goods imported in a free trade country are entitled to the preferential rate of duty accorded under that free trade agreement.

Manner of Conducting a Verification of Origin

4. A verification can be conducted by way of

(a) verification questionnaires; or

(b) visits to the premises.

Verification of Goods Imported Into Canada

5. Where the verification is conducted by verification questionnaire, the verification officer may send the verification questionnaire directly to the exporter or producer, provided they also send a copy of the verification questionnaire to the customs administration of the exporting party.

6. Should the customs administration of Canada determine that a verification visit is necessary, the designated office in Israel will be contacted to conduct the verification on behalf of the CBSA.

7. Article 5.6 and Annex 5.6.2 of CIFTA detail the procedures that the customs administration of Israel or another CIFTA beneficiary will follow in performing verification on behalf of the CBSA.

8. The CBSA may choose to be present at an office designated by the customs administration of Israel or another CIFTA beneficiary, for purposes of directing the manner in which the verification visit is to proceed.

Verification Questionnaires

9. The exporter or producer must complete and return the questionnaire within 30 days from the date the verification questionnaire was sent.

10. A verification questionnaire shall specify:

(a) the customs administration on whose behalf the verification questionnaire is being sent;

(b) the goods subject to verification;

(c) the period within which the verification questionnaire must be completed; and

(d) the name and title of the person from the exporting party's customs administration acting on behalf of the CBSA.

Conditions for Conducting a Verification Visit

11. Prior to a verification visit from a customs administration at the premises of an exporter or producer, the customs administration must send a written notification of the intent to conduct a verification visit by any method that produces a receipt to:

(a) the customs administration of the exporting country where the verification visit will take place (this notification function is controlled by the Trade Compliance Division); and

(b) the person whose premises are the subject of the verification visit (for the CBSA, the Israeli customs administration will be acting on its behalf).

12. The notice referred to in paragraph 11*(b)* shall specify:

(a) the customs administration conducting the verification and, when required, the identity of the customs administration on whose behalf the notice is being sent;

(b) the name of the exporter or producer whose premises are to be visited;

(c) the date and place of the proposed verification visit;

(d) the object and scope of the proposed verification visit, including specific reference to the goods that are the subject of the verification of origin;

(e) the names and titles of the officers or persons conducting the verification visit on behalf of the CBSA; and

(f) the legal authority for the verification visit.

13. The person whose premises are subject to the verification must give written consent for the customs administration to conduct the verification visit, within 30 days of receiving the notice.

Postponement of a Verification Visit

14. The customs administration of the country being visited may postpone the verification visit, by sending a written request to the officer who sent the notice. This request must be sent within 15 days of receipt of the notice. The postponement must not exceed 60 days from the date of receipt, unless a longer period is agreed to by the customs administration of the importing and exporting countries. The goods will not be denied preferential tariff treatment on the basis that the verification visit has been postponed.

Observers

15. An exporter or producer subject to a verification visit is permitted to have two observers present during the verification visit. Each person designated as an observer must be identified to the customs official conducting the verification visit at any time prior to or at the commencement of their role as an observer. The observers are not to participate, only to observe. This provision does not preclude the exporter or producer from having persons available to participate during verification.

Withdrawal of Preferential Tariff Treatment

16. The customs administration may withdraw preferential tariff treatment from the goods that are subject to a verification, where:

(a) the exporter or producer fails to consent to a verification visit within 30 days of confirmed receipt of the notification of the verification visit;

(b) the exporter or producer fails to complete and return the verification questionnaire within the specified time;

(c) the exporter or producer fails to maintain records or provide sufficiently detailed information; or

(d) the exporter or producer denies access to those records.

In such cases, the customs administration will send a written statement (as outlined below) with a notice of intent to deny to the person who signed the Certificate of Origin.

Written Statement

17. The customs administration conducting the verification will provide the exporter or producer with a written statement on whether the goods qualify for preferential tariff treatment, detailing the findings of fact and the legal basis on which the determination was made.

Review and Appeal

18. Where the origin of the goods has been re-determined and preferential tariff treatment has been withdrawn, the CBSA shall notify the exporter or producer. A decision to withdraw preferential tariff treatment is appealable by the importer, and the exporter or producer who signed the Certificate of Origin.

19. Where a producer who is not the exporter signs a Certificate of Origin voluntarily for the exporter, the producer will also have the right to appeal the re-determination of origin.

20. **Information concerning importer appeals is contained in** Memorandum D11-6-7, *Importers' Dispute Resolution Process for Origin, Tariff Classification, and Value for Duty of Imported Goods*.

Evidence of Fraud

21. Should evidence of fraud or misrepresentation be uncovered regarding an exporter or producer, the customs administration will turn such evidence over to the customs administration of the exporting country and ask them to continue the investigation and, if warranted, undertake appropriate prosecution under the laws of the exporter's country.

22. Similarly, fraudulent certification by a Canadian exporter or producer is an offence in Canada, subject to prosecution under the laws of Canada.

Appendix C

Guidelines for CCRFTA Verifications

Scope of a Verification

1. The purpose of verification is to determine whether goods imported into a free trade country are entitled to the preferential rate of duty accorded under the free trade agreement.

Manner of Conducting a Verification of Origin

2. A verification may be conducted by way of:

(a) verification questionnaires;

(b) verification letters;

(c) visits to the premises; or

(d) any other method of communication, as the Parties may agree.

Verification Letters and Questionnaires

3. As part of the verification process, the customs administration may send, to the exporter or producer of a good or a producer or supplier of a material, by any method that produces a confirmation of receipt, a verification questionnaire or letter identifying:

(a) the customs administration requesting the information;

(b) the name and title of the officer sending the verification letter or questionnaire;

(c) the goods or materials that are the subject of the verification; and

(d) the period within which the verification letter must be answered or the verification questionnaire must be completed and returned.

The information requested in the verification questionnaire or letter is a consolidation of information that the exporter, producer or supplier would have on hand and use to determine whether the goods qualify for preferential tariff treatment under the CCRFTA.

4. The period mentioned in paragraph 3*(d)* shall not be less than 30 days after the date on which the verification letter or questionnaire was received.

5. The person who receives the verification letter or questionnaire may, on a single occasion, make a written request within 30 days of receipt for an extension of not more than 30 days.

6. Where a response to an initial verification questionnaire or letter has not been received, within the specified time, from the exporter or producer and where no extension request referred to in paragraph 5 has been made, instructions provided under paragraphs 23 to 28 must be followed.

7. Where the producer or supplier of a material fails to respond to a verification questionnaire or letter, the origin of the material shall be considered unknown and therefore non-originating.

8. If it is found that the information provided in the verification questionnaire or letter is insufficient to support the exporter's certification of origin, the customs administration can request additional information by corresponding with the exporter or producer of a good or a supplier or producer of a material, or undertaking a verification visit.

9. Where the customs administration is able to determine whether the goods qualify for the preferential tariff treatment from the information provided, instructions provided under paragraphs 23 to 28 must be followed.

Other Methods of Communication

10. The customs administration may obtain information regarding the origin of the goods by any other method of communication (e.g., telephone) from the exporter or producer of a good or a producer or supplier of a material. Should any information obtained result in denial of preferential tariff treatment, that information must be confirmed in writing.

Verification Visits

11. Verification visits are performed at the premises of the exporter or producer of a good or the premises of a producer or supplier of a material to verify that the goods meet the rules of origin in accordance with the CCRFTA.

Conditions for Conducting a Verification Visit

12. Prior to a verification visit from a customs administration at the premises of an exporter or producer of a good or of a producer or supplier of a material, the customs administration must send a written notification of intent to conduct a verification visit to by any method that produces confirmation of receipt to:

(a) the customs administration of Costa Rica;

(b) the person whose premises are the subject of the verification visit; and

(c) where requested by the customs administration of Costa Rica, the Embassy of Costa Rica located in Canada.

13. The written notice to the customs administration of Costa Rica must be sent at least 5 working days before it is sent to the person whose premises are subject to the verification visit. In all instances, the written notice shall be sent by any method that produces confirmation of receipt.

14. The written notification referred to in paragraph 12 must specify:

(a) the identity of the customs administration issuing the notification;

(b) the name of the person whose premises are to be visited;

(c) the date and place of the proposed verification visit;

(d) the object and scope of the verification visit, including a description of the goods and/or materials which are subject to the verification;

(e) the names and titles of the officers conducting the verification visit; and

(f) the legal authority for the verification visit.

15. The person whose premises are subject to the verification must give written consent for the customs administration to conduct the verification visit within 30 days of receiving the notice.

16. Where the producer or supplier of a material does not consent to a verification visit or denies access to the records, the origin of the material shall be considered unknown and therefore non-originating.

Postponement of a Verification Visit

17. The customs administration of Costa Rica may postpone the verification visit, by sending a written request to the officer who sent the notice. This request must be sent within 15 days of receipt of the notice. The postponement period must not exceed 60 days from the date of receipt, unless a longer period is agreed to by the customs administration of the importing and exporting countries. The goods will not be denied preferential tariff treatment on the basis that the verification visit has been postponed.

18. A person who receives written notification, as described in paragraphs 12 to 14 above, may, on a single occasion, within 15 days of receipt of the notice, request a postponement of the verification visit. The request must be made in writing to the officer who sent the notice and may not exceed 60 days from the date of receipt of the notice, unless a longer period is agreed to by the customs administration conducting the verification.

Observers

19. An exporter, producer or supplier subject to a verification visit is permitted to have two observers present during the verification visit. Each person designated as an observer must be identified to the customs official conducting the verification visit at any time prior to or at the commencement of their role as an observer during the verification visit. The observers are not to participate, only to observe. This provision does not preclude the exporter, producer or supplier from having persons available to participate during verification.

Regional Value Content

20. Where a producer of goods elects to average the regional value content of those goods over a time period, the customs administration conducting the verification will not verify the regional value content of those goods, until that time period has elapsed.

Generally Accepted Accounting Principles

21. Where the customs administration finds during a verification that producer has failed to maintain records in accordance with the Generally Accepted Accounting Principles (GAAP) applicable in the territory of Costa Rica, the officer shall provide written notice to that producer stating that they have 60 days from receipt of the written notice to record those costs in accordance with the GAAP. The written notice shall be sent by any method that produces confirmation of receipt.

Denial or Withdrawal of Preferential Tariff Treatment

22. The customs administration conducting the verification may deny or withdraw the preferential tariff treatment from the goods that are the subject of a verification where:

(a) the exporter or producer fails to answer the verification letter or complete the verification questionnaire within 30 days of confirmed receipt or extension date, if requested;

(b) the exporter or producer does not consent to a verification visit within 30 days of confirmed receipt of the notification of visit or such longer period, if a postponement of the verification visit has been requested, within the time limitations specified in paragraph 18;

(c) subject to paragraph 21, the exporter or producer fails to maintain records or provide sufficiently detailed information;

(d) the exporter or producer denies access to those records; or

(e) the origin of the good is changed because a material used in the production of the good is determined to be non-originating as set out in paragraphs 7 and 16.

In such cases, the customs administration will send a written statement (as outlined below) with a notice of intent to deny to the person who signed the Certificate of Origin.

Written Statement

23. The customs administration conducting the verification will provide the exporter or producer with a written statement on whether the goods qualify for preferential tariff treatment, detailing the findings and the legal basis on which the determination was made.

24. Should the goods qualify for the preferential tariff treatment claimed the written statement may be sent by regular mail.

25. Where the written statement includes a determination that the goods are non-originating, a notice of intent to deny preferential tariff treatment must also be included. It will identify a time period in which further information can be provided and will include the date after which preferential tariff treatment will be withdrawn for the goods verified.

26. The written statement and notice of intent to deny may be sent by any method that produces confirmation of receipt.

27. If information is brought forward within 10 days of the date of receipt of the notice, the information will be reviewed to determine if the goods qualify for preferential tariff treatment.

28. Where a verification of a producer or supplier of a material has been conducted, the customs administration conducting the verification will inform the producer or supplier by letter whether or not the specific material under review is an originating material. This letter is sent as an informal courtesy and not as a result of obligations under any legislation or regulation.

Pattern of Conduct by an Exporter or Producer Regarding False or Unsupported Origin Certification

29. Pattern of conduct is established where it has been determined that the exporter or producer has made false or unsupported representations that goods imported into a free trade country qualify for preferential tariff treatment and has resulted in not less than two negative written statements with respect to identical goods, as a result of not less than two verifications of not less than two importations. Article V.14 of the CCRFTA defines "identical goods" as:

> ...goods that are the same in all respects, including physical characteristics, quality and reputation, irrespective of minor differences in appearance that are not relevant to a determination of origin of those goods.

30. Once a pattern of conduct is established, the customs administration may withhold preferential tariff treatment on identical goods until the exporter or producer establishes compliance.

31. If a pattern of conduct is established, the verification process does not need to be conducted on future imports of identical goods. However, the importer must be notified each time the goods are denied preferential tariff treatment. The exporter and/or producer must be notified that the goods have been denied preferential tariff treatment if they have provided the importer with a Certificate of Origin after pattern of conduct has been established.

Interpretation of Tariff Classification and Valuation of Materials

32. This refers to materials used in the production of goods where the exporter or the importer has relied on a tariff classification or value applied to those materials by the customs administration of the country from which the goods were exported.

33. Where the customs administration of the country into which the goods were imported determines that goods do not qualify as originating goods based on a tariff classification or a value applied to one or more of the materials used in the production of those goods, which differs from that of the customs administration of the exporting country, the determination will not become effective until the importer and the person who signed the Certificate of Origin have been notified in writing of the determination by the customs administration of the country in which the goods were imported. This would apply where the exporter has:

> *(a)* been issued an advance ruling or ruling on the tariff classification or value of the materials, or given consistent treatment to the entry of the materials under the tariff classification or value at issue by the customs administration; and
>
> *(b)* the advance ruling or ruling or consistent treatment, as defined in the Uniform Regulations of the free trade agreement, was given prior to notification of the determination.

Note: This applies to a material that is used in the production of goods, or that is used in the production of a material that is used in the production of goods.

34. Where a customs administration denies preferential tariff treatment to goods, and the conditions described in paragraphs 35*(a)* and *(b)* exist, the effective date of the denial shall be postponed for a period not exceeding 90 calendar days, with the provision that the importer of those goods or the person who completed and signed the Certificate of Origin demonstrate having relied in good faith to their detriment on the tariff classification or value applied to such materials by the customs administration.

35. Consistent treatment means the established application by the customs administration of a party that can be substantiated by the continued acceptance by that customs administration of the tariff classification or value of identical materials on importations of the materials into its territory by the same importer, over a period of not less than two years immediately prior to the date when the Certificate of Origin for the good which is the subject of the determination under paragraph 14 of Article V.6 of CCRFTA, was completed, provided that with respect to those importations:

> *(a)* the materials had not been accorded a different tariff classification or value by one or more district, regional, or local offices of that customs administration on the date of the determination; and
>
> *(b)* the tariff classification or value of such materials is not the subject of a verification, review, or appeal by that customs administration on the date of the determination.

Modification or Revocation of a Ruling

36. Where the customs administration modifies or revokes a ruling other than an advance ruling, the modification shall not apply to goods, which are the subject of the ruling, that have been imported by the person who was given the ruling prior to the date of modification or revocation, if:

(a) all the terms and conditions specified in the original ruling have been complied with; and

(b) there has been no change in the material facts or circumstances on which the ruling was based.

Review and Appeal

37. Where the origin of the goods has been re-determined and preferential tariff treatment has been denied or withdrawn, the CBSA shall notify the exporter or producer. A decision by the CBSA to deny preferential tariff treatment is appealable by the importer, and the exporter or producer who signed the Certificate of Origin.

38. Where a producer who is not the exporter signs a Certificate of Origin voluntarily for the exporter, the producer will also have the right to appeal the re-determination of origin.

39. Information concerning importer appeals is contained in Memorandum D11-6-7, *Importers' Dispute Resolution Process for Origin, Tariff Classification, and Value for Duty of Imported Goods*.

Evidence of Fraud

40. Should evidence of fraud or misrepresentation be uncovered regarding an exporter or producer, the customs administration will turn such evidence over to the customs administration of the exporting country and ask them to continue the investigation and, if warranted, undertake appropriate prosecution under the laws of the exporter's country.

41. Similarly, fraudulent certification by a Canadian exporter or producer is an offence in Canada, subject to prosecution under the laws of Canada.

Appendix D

Guidelines for CPFTA, CCOFTA, CJFTA and CPAFTA Verifications

Scope of Verification

1. The purpose of verification is to determine whether goods imported into a free trade country are entitled to the preferential rate of duty accorded under the free trade agreement.

Manner of Conducting a Verification of Origin

2. A verification may be conducted by way of:

(a) verification questionnaires;

(b) verification letters;

(c) visits to the premises; or

(d) such other procedures as the parties may agree.

Verification Letters and Questionnaires

3. As part of the verification process, the customs administration may send, to the exporter or producer of a good or a producer or supplier of a material, by any method that produces a confirmation of receipt, a verification questionnaire or letter identifying:

(a) the customs administration requesting the information;

(b) the name and title of the officer sending the verification letter or questionnaire;

(c) the goods or materials that are the subject of the verification; and

(d) the period within which the verification letter must be answered or the verification questionnaire must be completed and returned.

The information requested in the verification questionnaire or letter is a consolidation of information that the exporter, producer or supplier would have on hand and use to determine whether the goods qualify for preferential tariff treatment under the CPFTA, CCOFTA, CJFTA or CPAFTA.

4. The period mentioned in paragraph 3*(d)* shall not be less than 30 days beginning on the date on which the verification letter or questionnaire was received.

5. The person who receives the verification letter or questionnaire may, on a single occasion, make a written request within 30 days of receipt for an extension of not more than 30 days.

6. Where a response to an initial verification questionnaire or letter has not been received, within the specified time, from the exporter or producer and where no extension request referred to in paragraph 6 has been made, instructions provided under paragraphs 20 to 25 must be followed.

7. Where the producer or supplier of a material fails to respond to a verification questionnaire or letter, the origin of the material shall be considered unknown and therefore non-originating.

8. If it is found that the information provided in the verification questionnaire or letter is insufficient to support the exporter's certification of origin, the customs administration can request additional information by corresponding with the exporter or producer of a good or a supplier or producer of a material, or undertaking a verification visit.

9. Where the customs administration is able to determine whether the goods qualify for the preferential tariff treatment from the information provided, instructions provided under paragraphs 20 to 25 must be followed.

Verification Visits

10. Verification visits are performed at the premises of the exporter or producer of a good or the premises of a producer or supplier of a material to verify that the goods meet the rules of origin in accordance with the CPFTA, CCOFTA, CJFTA or CPAFTA.

Conditions for Conducting a Verification Visit

11. Prior to a verification visit from a customs administration at the premises of an exporter or producer of a good or of a producer or supplier of a material, the customs administration must send a written notification of intent to conduct a verification visit by any method that produces confirmation of receipt to:

(a) the customs administration of the country where the verification visit will take place;

(b) the person whose premises are the subject of the verification visit; and

(c) where requested by the customs administration of the exporting party, that party's embassy located in Canada.

12. The written notification referred to in paragraph 11 must specify:

(a) the identity of the customs administration issuing the notification;

(b) the name of the person whose premises are to be visited;

(c) the date and place of the proposed verification visit;

(d) the object and scope of the verification visit, including a description of the goods and/or materials which are subject to the verification;

(e) the names and titles of the officers conducting the verification visit; and

(f) the legal authority for the verification visit.

13. The exporter or producer whose premises are subject to the verification must give written consent for the customs administration to conduct the verification visit within 30 days of receiving the notice.

14. Where the producer or supplier of a material does not consent to a verification visit or denies access to the records, the origin of the material shall be considered unknown and therefore non-originating.

Postponement of a Verification Visit

15. The customs administration of the country being visited may postpone the verification visit, by sending a written request to the officer who sent the notice. This request must be sent within 15 days after the day on which it receives the notice. The postponement period must not exceed 60 days beginning on the day on which the notice is received, unless a longer period is agreed to by the customs administration of the importing and exporting countries. The goods will not be denied preferential tariff treatment on the basis that the verification visit has been postponed.

16. A person who receives written notification, as described in paragraphs 11 and 12 above, may, on a single occasion, within 15 days after the day on which the notice is received, request a postponement of the verification visit. The request must be made in writing to the officer who sent the notice and may not exceed 60 days beginning on the day on which the notice is received, unless a longer period is agreed to by the customs administration conducting the verification.

Observers

17. An exporter, producer or supplier subject to a verification visit is permitted to have two observers present during the verification visit. Each person designated as an observer must be identified to the customs official conducting the verification visit at any time prior to or at the commencement of their role as an observer during the verification visit. The observers are not to participate, only to observe. This provision does not preclude the exporter, producer or supplier from having persons available to participate during verification.

Generally Accepted Accounting Principles

18. Where a Party conducts a verification of origin involving a value test, "de minimis" calculation or any other provision in Chapter Three (Rules of Origin) of the CPFTA, in Chapter Three (Rules of Origin) of the CCOFTA, in Chapter Four (Rules of Origin) of the CJFTA or in Chapter Three (Rules of Origin) of the CPAFTA, to which Generally Accepted Accounting Principles may be relevant, it shall apply such principles as are applicable in the territory of the other Party.

Denial or Withdrawal of Preferential Tariff Treatment

19. The customs administration conducting the verification may deny or withdraw the preferential tariff treatment from the goods that are the subject of verification where:

(a) the exporter or producer fails to answer the verification letter or complete the verification questionnaire within 30 days of confirmed receipt or extension date, if requested;

(b) the exporter or producer does not provide written consent to a verification visit within 30 days after the day on which the notice of visit is received or, for such longer period if a postponement of the verification visit has been requested, within the time limitations specified in paragraph 16;

(c) subject to paragraph 18, the exporter or producer fails to maintain records in accordance with the applicable laws of the country in which the verification of origin is conducted or provide sufficiently detailed information;

(d) the exporter or producer denies access to those records; or

(e) the origin of the good is changed because a material used in the production of the good is determined to be non-originating as set out in paragraphs 7 and 14.

In such cases, the customs administration will send a written statement (as outlined below) with a notice of intent to deny to the person who signed the Certificate of Origin.

Written Statement

20. The customs administration conducting the verification will provide the exporter or producer with a written statement on whether the goods qualify for preferential tariff treatment, detailing the findings and the legal basis on which the determination was made.

21. Should the goods qualify for the preferential tariff treatment claimed the written statement may be sent by regular mail.

22. Where the written statement includes a determination that the goods are non-originating, a notice of intent to deny preferential tariff treatment must also be included. It will identify a time period in which further information can be provided and will include the date after which preferential tariff treatment will be withdrawn for the goods verified.

23. The written statement and notice of intent to deny may be sent by any method that produces confirmation of receipt.

24. If information is brought forward within 10 days of the date of receipt of the notice, the information will be reviewed to determine if the goods qualify for preferential tariff treatment.

25. Where a verification of a producer or supplier of a material has been conducted, the customs administration conducting the verification will inform the producer or supplier by letter whether or not the specific material under review is an originating material.

Pattern of Conduct by an Exporter or Producer Regarding False or Unsupported Origin Certification

26. Pattern of conduct is established where it has been determined that the exporter or producer has made false or unsupported representations that goods imported into a free trade country qualify for preferential tariff treatment and has resulted in not less than two negative written statements with respect to identical goods, as a result of not less than two verifications of not less than two importations. Article 423 of CPFTA, Article 423 of CCOFTA, Article 5-11 of CJFTA and Article 4.01 of CPAFTA, define "identical goods" as:

> ...goods that are the same in all respects, including physical characteristics, quality and reputation, irrespective of minor differences in appearance that are not relevant to a determination of origin of those goods.

27. Once a pattern of conduct is established, the customs administration may withhold preferential tariff treatment on identical goods until the exporter or producer establishes compliance.

28. If a pattern of conduct is established, the verification process does not need to be conducted on future imports of identical goods. However, the importer must be notified each time the goods are denied preferential tariff treatment. The exporter and/or producer must be notified that the goods have been denied preferential tariff treatment if they have provided the importer with a Certificate of Origin after pattern of conduct has been established.

Modification or Revocation of a Ruling

29. Where the customs administration modifies or revokes a ruling other than an advance ruling, the modification shall not apply to goods, which are the subject of the ruling, that have been imported by the person who was given the ruling prior to the date of modification or revocation, if:

(a) all the terms and conditions specified in the original ruling have been complied with; and

(b) there has been no change in the material facts or circumstances on which the ruling was based.

Review and Appeal

30. Where the origin of the goods has been re-determined and preferential tariff treatment has been denied or withdrawn, the CBSA shall notify the exporter or producer. A decision by the CBSA to deny preferential tariff treatment is appealable by the importer, and the exporter or producer who signed the Certificate of Origin.

31. Where a producer who is not the exporter signs a Certificate of Origin voluntarily for the exporter, the producer will also have the right to appeal the re-determination of origin.

32. Information concerning importer appeals is contained in Memorandum D11-6-7, *Importers' Dispute Resolution Process for Origin, Tariff Classification, and Value for Duty of Imported Goods*.

Evidence of Fraud

33. Should evidence of fraud or misrepresentation be uncovered regarding an exporter or producer, the customs administration will turn such evidence over to the customs administration of the exporting country and ask them to continue the investigation and, if warranted, undertake appropriate prosecution under the laws of the exporter's country.

34. Similarly, fraudulent certification by a Canadian exporter or producer is an offence in Canada, subject to prosecution under the laws of Canada.

Appendix E

Guidelines for CEFTA Verifications of Imported and Exported Goods

1. Under the CEFTA, a verification of origin is conducted by the customs administration of the exporting country upon request and on behalf of the customs administration of the importing country (*Customs Act* 42.1(1.1) and 97.201(1)).

2. As part of the verification process, documentation collected during the course of verification may be shared between the customs administration requesting the verification and the customs administration conducting the verification (*Customs Act* 42.1 (1.1), 97.201(1) and 107(8)).

Verification of Origin of Goods Imported Into Canada

Initiating a Verification

3. Initiation of the verification of goods imported into Canada will be the responsibility of the CBSA (*Customs Act* 42.1(1.1)).

Scope of Verification

4. The purpose of a CEFTA verification of imported goods is to determine whether goods imported into Canada from an EFTA country are entitled to the preferential rate of duty accorded under the free trade agreement.

Method of Verification

5. The CBSA shall conduct a verification of origin by requesting the customs administration of the EFTA country of export conduct the verification on our behalf and provide an opinion as to whether the goods are originating (*Customs Act* 42.1(1.1)).

Detrimental Reliance under CEFTA

6. In accordance with 42.3(5) of the *Customs Act*, where the origin is re-determined and the EFTA exporter demonstrates that it relied in good faith and to its detriment on a ruling made by a CEFTA customs administration concerning the tariff classification or value of non-originating material used in the production of the goods, the re-determination shall apply only to importations of the goods made after the date of the re-determination.

Origin Decision

7. Upon receipt of the verification information from the EFTA customs administration, the CBSA will review the verification findings and make a decision as to whether the good originates. The importer will be notified of the CBSA's decision (*Customs Act* 59(1)).

Denial or Withdrawal of Preferential Tariff Treatment

8. In accordance with 42.1(3) of the *Customs Act*, CBSA may deny or withdraw the preferential tariff treatment from the goods that are the subject of verification where:

(a) the customs administration of the EFTA country of export fails to conduct verification or provide an opinion as to whether the goods are originating; or

(b) the verification information received from the EFTA country of export is not sufficient to allow CBSA to determine whether the goods are originating.

Review and Appeal

9. A decision resulting in the re-determination of the origin of the goods and withdrawal of preferential tariff treatment is appealable by the importer (*Customs Act* 60(1)).

10. Information regarding appeals is contained in Memorandum D11-6-7, *Importers' Dispute Resolution Process for Origin, Tariff Classification, and Value for Duty of Imported Goods*.

Verification of Origin of Goods Exported From Canada

Initiating a Verification

11. Initiation of the verification of goods exported from Canada will be the responsibility of the customs administration of the EFTA country of import (*Customs Act* 97.201(1)).

Scope of Verification

12. The purpose of a CEFTA verification of exported goods is to determine whether goods exported from Canada to an EFTA country are entitled to the preferential rate of duty accorded under the free trade agreement.

Manner of Conducting a Verification of Origin (*Customs Act* 97.201(2))

13. Upon receipt of a request from the EFTA country of import to verify the originating status of a good, the CBSA will conduct the verification by way of:

(a) visits to the premises;

(b) verification questionnaires; or

(c) verification letters.

Conditions for Conducting a Verification Visit

14. The officer conducting a verification visit shall send a written notice of the intent to conduct verification to the exporter or producer whose premises are the subject of the verification visit.

Observers

15. If requested by the customs administration of the EFTA country of import, the exporter whose premises are the subject of the verification visit must permit the participation of an observer from that EFTA customs administration.

Audit Report

16. As part of the origin verification, the exporter will be provided with a report outlining the verification officers' preliminary findings.

Origin Decision

17. Upon completion of the origin verification:

(a) the EFTA customs administration requesting the verification will be provided an opinion regarding whether or not the good originates, including any supporting documents that may be requested by that customs administration (*Customs Act* 97.201(3) and 107(8)); and

(b) the exporter or producer of the goods, who was subject to the verification of origin, will be notified of the decision as to whether the good originates (*Customs Act* 97.201(4) and 97.201(5)).

Review and Appeal

18. The origin decision is appealable under section 60 of the *Customs Act* by the exporter or producer who received notice under subsection 59(2) of the *Customs Act*.

Evidence of Fraud

19. Fraudulent certification by a Canadian exporter or producer is subject to prosecution under the laws of Canada.

References	
Issuing Office	Trade and Anti-dumping Programs Directorate
Headquarters File	n/a
Legislative References	*Customs Act* North American Free Trade Agreement (NAFTA) Canada-Chile Free Trade Agreement Canada-Israel Free Trade Agreement Canada-Costa Rica Free Trade Agreement Canada-EFTA Free Trade Agreement Canada-Peru Free Trade Agreement Canada-Colombia Free Trade Agreement Canada-Jordan Free Trade Agreement Canada-Panama Free Trade Agreement
Other References	D11-4-2, D11-4-14, D11-4-18, D11-4-19, D11-4-24, D11-4-26, D11-6-7, D17-1-21 and D20-1-5
Superseded Memorandum D	D11-4-20 dated May 12, 2016